

FILED

JUN - 1 2009

CLERK, U.S. DISTRICT COURT
NORFOLK, VA

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

ROBERT WALLS, JR., #335576,

Petitioner,

v.

2:08CV500

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on June 25, 2004, in the Circuit Court for the City of Richmond, Virginia, for robbery and assault. As a result of the convictions, petitioner was sentenced to serve eight years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on April 6, 2009. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received from petitioner on April 24, 2009, a document entitled "Response to Motion to Dismiss," which is construed as objections to the report.

The Court, having reviewed the record and examined the objections filed by the petitioner and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate

Judge. Therefore, it is ORDERED that the petition be DENIED and DISMISSED on the basis of petitioner's procedural defaults in the state system and on the merits and that judgment be entered in respondent's favor.

To the extent that petitioner objects to the Magistrate Judge's conclusions regarding his ineffective assistance of counsel claims, the objections are without merit. None of petitioner's claims are supported by credible evidence. To the contrary, the record reflects efforts by defense counsel to withdraw petitioner's guilty plea and also reflects favorable treatment of petitioner through the dismissal of charges against him by the Commonwealth Attorney. There is no evidence of coercion or undue influence being used against petitioner to prompt a guilty plea. Petitioner was well-represented.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for the respondent.

/s/
Rebecca Beach Smith
United States District Judge *RBS*

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

June 1, 2009